

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Ethan VICKERY

Serial No.: 10/550,378

Filed: September 21, 2005

For: TAMPER RESISTANT WEIGHTED
RODENT AND INSECT BAIT STATION

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July 30, 2010
Date

/Mark T. Garrett/
Mark T. Garrett

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Patentee requests reconsideration of Patent Term Adjustment (PTA) under 37 C.F.R. §1.705(d). The Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) included with the Issue Notification dated May 26, 2010 indicates a PTA of 135 days. Patentee believes this to be an error and request the PTA to be changed to 212 days.

REMARKS

The patent term adjustment under 35 U.S.C. §154(b) for the above-identified patent is listed as 135 days. The determination of 135 days is in error in that pursuant to 35 U.S.C. §154(b) the Office failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b) **and** failed to take certain action within the time frame specified in 37 CFR §1.702(a).

Pursuant to 37 CFR §1.703(b), Patentee is entitled to a period of patent term adjustment due to failure of the Office to issue a patent within three years after the date on which the national stage commenced, *i.e.*, September 22, 2008 (hereinafter "Three Year Delay"). Since the Office failed to issue the above-identified patent until June 15, 2010, and Patentee did not file a Request for Continued Examination until December 9, 2008, Patentee is entitled to a period of patent term adjustment beginning on the day after the date that is 3 years after the filing date of the application, *i.e.*, September 23, 2008, and ending on the day before the date a Request for Continued Examination was filed, *i.e.*, December 8, 2008. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 77 days.

However, in addition to the patent term adjustment due to Three Year Delay, pursuant to 37 CFR §1.703(a) Patentee respectfully submits that they are also entitled to a period of patent term adjustment under §1.702(a) (hereinafter "Examination Delay") which includes the period of delay of 272 days due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the actual filing date (*i.e.*, by November 22, 2006). As the Office failed to mail an action under 35 U.S.C. §132 until August 21, 2007, Patentee is entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed, *i.e.*, November 23, 2006, and ending on the date of mailing of an

action under 35 U.S.C. §132, *i.e.*, August 21, 2007. Accordingly, the period of patent term adjustment due to Examination Delay by the Office is 272 days, which is in agreement with the period calculated by the Office.

As set forth in 37 CFR §1.703(f), Patentee is entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 (hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Patentee failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of Office Delay is the sum of the period of Three Year Delay (77 days) and the period of Examination Delay (272 days) *to the extent these periods of delay are not overlapping*. As the period of 14 Month Delay ended on August 21, 2007, prior to the first day of the period of Three Year Delay, *i.e.*, September 22, 2008, Patentee submits that these periods are not overlapping. Accordingly, Patentee submits that the total period of Office Delay is 349 days, which is the sum of the period of Three Year Delay (272 days) and the period of Examination Delay (77 days), reduced by the period of overlap (272 days + 77 days - 0 days = 349 days).

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay, which the USPTO correctly calculated as a period of 137 days. Accordingly, Patentees submit that the correct patent term adjustment for the above-referenced application is **212 days**, which is the difference between the total period of Office Delay (349 days) and the period of Applicant Delay (137 days).

In view of the foregoing, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of **212 days**.

CONCLUSION

In consideration of the events described above, Patentee believes the PTA calculation of 135 days is incorrect. As such, Patentee respectfully requests reconsideration of the PTA in the following manner:

- 1) Total PTO delay should be calculated as 349 days;
- 2) Total Applicant delay should be calculated as 137 days; and
- 3) Total PTA should be calculated as 212 days.

The required fee in the amount of \$200.00 in connection with the filing of this paper is being charged to a credit card through EFS-Web concurrently with this submission. The Commissioner is hereby authorized to deduct any underpayment of fees or any additional fees required under 37 C.F.R. §§ 1.16 to 1.21 in connection with the filing of this paper from Fulbright & Jaworski Deposit Account No.: 50-1212/VICE:005US.

Respectfully submitted,

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